IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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SUPREME COURT, U.S.

80-444

WILLIAM E. FOLEY, Director,
Administrative Office of the
United States Courts,

Plaintiff-Appellee,

v.

JAMES EARL CARTER, President of
the United States

Defendant-Appellant,

HUBERT L. WILL, ET AL.,

Intervenors-Appellees,

ROGER FRIEDMAN,

Appellant-Amicus Curiae

CASE NOS. 80-1548
80-1551

CERTIFICATE OF QUESTIONS OF LAW

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

In the above-entitled case, certain questions of law have arisen upon which this court desires the instruction of the Supreme Court of the United States for the decision of the case. Because of the pendency before the Supreme Court of two consolidated cases which raise these and allied questions,[1/] the judges of the United States Court of Appeals for the District of Columbia Circuit believe that certification of these questions is appropriate "in the proper administration and expedition of judicial business." Wisniewski v United States, 353 U.S. 901, 902 (1957).

1/ Hubert L. Will et al v. United States, Nos. 79-983 and 79-1689. The consolidated Will cases present the questions herein certified in the context of considerably broader claims concerning cost-of-living adjustments to federal judicial salaries since 1977.

QUESTIONS CERTIFIED

1. Does Section 101(c) of Joint Resolution 412, Public Law No. 96-86, 93 Stat. 656 (October 12, 1979) apply to the judicial branch of the government?

2. If Section 101(c) does so apply, does it violate the Compensation Clause of Article III, Section 1 of the United States Constitution by diminishing the compensation of federal judges "during their continuance in office"?

In view of the significance of the inter-branch disputes from which these questions grow, and the need for a prompt, definitive and univocal resolution of those disputes, the judges of the United States Court of Appeals for the District of Columbia Circuit also suggest, pursuant to Supreme Court Rule 24.2, that the United States Supreme Court order up the record in this case and, upon that record, decide the entire case.

STATEMENT

I

In this case, Appellee William E. Foley, Director of the Administrative Office of the United States Courts, sought mandamus and declaratory relief against Appellant James Earl Carter, President of the United States.[1/] Appellee sought a judgment, inter alia, declaring that § 101(c) of Public Law 96-86 (approved October 12, 1979) did not apply to the judicial branch and did not thereby reduce the cost-of-living adjustment that had taken effect on October 1 under the terms of the Executive Salary Cost-of-Living Act of 1975, 5 U.S.C. § 5318 and 28 U.S.C. § 461 (1980). Alternatively, Appellee sought a declaratory judgment that § 101(c) is unconstitutional as applied to the judicial branch because it diminishes the compensation of judges "during their continuance in office" in violation of Article III, section 1 of the United States Constitution.

The District Court for the District of Columbia declared that the "plain meaning" of § 101(c) is that it does not apply to the judicial branch. The appeal from that ruling is now pending in the United States Court of Appeals for the District of Columbia Circuit.

1/ Hubert L. Will and thirteen other federal judges moved the District Court for leave to intervene as parties plaintiff on November 20, 1979, eleven days after the original complaint was filed. That motion was granted on January 4, 1980. The fourteen judges are representatives of a class of 600 federal judges, and are the named plaintiff-appellees in Hubert L. Will et al v. United States, Nos. 79-983 and 79-1689, now pending before the United States Supreme Court.

II

Annual adjustments of federal judicial salaries are governed by the Federal Pay Comparability Act of 1970, 5 U.S.C. §§ 5301-08 (1980) and its amendments. Under the Act's procedures, the President transmits to Congress a report of the pay adjustments which have been recommended to him under the terms of the statute unless he determines that an alternative adjustment is appropriate. This alternative adjustment becomes effective on the first day of the first applicable pay period beginning on or after October 1 unless Congress disapproves the plan within 30 days after it is transmitted, in which case the pay adjustments originally recommended to the President become effective. (5 U.S.C. § 5303(c)(2), (m) (1980)).

On August 31, 1979, the President submitted to Congress an alternative plan for a proposed cost-of-living increase for federal employees for fiscal year 1980. The adjustments were limited to a 7 percent increase. 15 Weekly Comp. of Pres. Doc. 1530 (Aug. 31, 1979). In view of the fact that Congress did not disapprove the alternative plan within thirty days of its transmittal, it automatically became effective. In addition, a 5.5 percent increase became due from adjustments which had not been paid during fiscal year 1979 because of a prohibition in section 304(a) of the Legislative Branch Appropriations Act, 1979 (P.L. 95-391). With the close of fiscal year 1979, this prohibition expired and the pertinent federal employees

automatically became entitled to the 5.5 percent increase, compounded. Thus, on October 1, 1979, the first day of the first pay period of fiscal year 1980, all Article III judges became entitled to increases of approximately 12.9 percent, and on October 8, 1979, the first day of their next pay period, all non-Article III personnel in the judicial branch whose salaries are linked to those of the Article III judges became entitled to the same increase.

On October 12, 1979, however, the President approved Public Law 96-86 which sought to limit any salary increases paid from funds appropriated for fiscal year 1980 to 5.5 percent. The provisions central to the issues involved in this case are found in paragraphs two and three of § 101(c) of that Law.

> For the fiscal year 1980, funds available for payment to executive employees, which includes Members of Congress, who under existing law are entitled to approximately 12.9 percent increase in pay, shall not be used to pay any such employee or elected or appointed official any sum in excess of 5.5 percent increase in existing pay and such sum if accepted shall be in lieu of the 12.9 percent due for such fiscal year.
>
> Provided, further, that for the purpose of carrying out this provision and notwithstanding the provisions of the Federal Pay Comparability Act of 1970, the Executive Salary Cost-of-Living Adjustment Act, or any other related provision of law, which would provide an approximate 12.9 percent increase in pay for certain Federal officials for pay periods beginning on or after October 1, 1979, and notwithstanding section 102 of this joint resolution, the provisions of section 304 of the Legislative Branch Appropriation Act, 1979, which limit the pay for certain Federal offices and

> positions, shall apply to funds appropriated by this joint resolution or any Act for the fiscal year 1980, except that in applying such limitation the term "at a rate which exceeds by more than 5.5 percent the rate" shall be substituted for the term "at a rate which exceeds the rate" where it appears in subsection (a) of such section for the purpose of limiting pay increases to 5.5 percent.

On the basis of this legal and factual background, Appellee asserted that until he knew whether the pay freeze effected by § 101(c) applied to the judicial branch, he could not calculate the rate of adjustment for the various pay systems in the judicial branch. Appellee further asserted that he faced constitutional challenge from the federal judiciary for providing anything less than the full amount of the increases that had become effective before October 12, 1979, and on the other hand, prosecution by the executive branch under the Anti-Deficiency Act, 31 U.S.C. § 665(a) (1976) should he make adjustments at a rate greater than the 5.5 percent limit set by the pay freeze of Public Law 96-86.

The District Court found that § 101(c) did not apply to the judicial branch, that the judges and others were entitled to the full 12.9 percent increase, and entered summary judgment accordingly on March 24, 1980. The instant appeal was filed by the President on May 20, 1980.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, George A. Fisher, Clerk of the United States Court of Appeals for the District of Columbia Circuit, do hereby certify that the foregoing pages numbered 1 to 6 inclusive, constitute the original certificate of the said Court of Appeals to the Supreme Court of the United States including the certified questions and the statement of the facts and the nature of the cause filed in the case entitled:

William E. Foley

v.

James Earl Carter

Nos. 80-1548
80-1551

IN TESTIMONY WHEREOF, I hereunto subscribe my name and fix the seal of the United States Court of Appeals for the District of Columbia Circuit at the city of Washington, D.C., this 9th day of September, A.D. 1980.

George A. Fisher

Clerk, United States
Court of Appeals
for the District of
Columbia Circuit

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GENERAL DOCKET
UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MCM 9-10-80

APPEAL FROM THE DISTRICT COURT In SC-1557

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ffice of the U. S. Courts

ubert L. Will, et al.,
(Intervenor-pltfs.)

v.

James Earl Carter,

Appellant

1243

Popular Name:

Number of Case/Order Below: CA 79-3063
Case Type: CV.US
JS-34: Yes ☒ No ☐
Judge Below: Smith (9044)
Date of Judg./Order: 03-26-80
USDC Offense/Nature of Suit Code: 1890
Date Docketed: 05-21-80
Date Filed in Dist. Court: 11-09-79
Notice of Appeal Filed: 05-20-80
U.S. Mag: ☐ Direct ☐ Indirect

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GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

APPEAL FROM THE DISTRICT COURT

William E. Foley, Director,
Administrative Office of the U. S. Courts

Hubert L. Will, et al.,
(Intervenor-pltfs.)

v.

James Earl Carter

Roger Friedman,
(Intervenor-deft.),

Appellant

Popular Name:

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Date of Judg./Order: 05-09-80
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